IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 28TH NOVEMBER 2006 / 7TH AGRAHAYANA 1928

WP(C).No. 18003 of 2006(R)

PETITIONER:
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1. THE MANAGER,
VMHS, KRISHNAPURAM, ALAPPUZHA DISTRICT.

2. MINI A.K.,
HINDI (HSA), VMHS, KRISHNAPURAM,
ALAPPUZHA DISTRICT.

BY ADV. SMT.V.P.SEEMANDINI
SMT.S.KARTHIKA
SMT.LEKSHMI RAMANATHAN
SRI.T.R.RAJESH
SRI.M.R.ANISON
SMT.K.P.GEETHAMANI
SMT.REMANI.T.B.

RESPONDENTS:
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1. STATE OF KERALA, REP. BY
ITS SECRETARY TO GOVT.,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
TRIVANDRUM.

3. DEPUTY DIRECTOR OF EDUCATION,
ALAPPUZHA.

4. DISTRICT EDUCATIONAL OFFICER,
MAVELIKKARA.

BY GOVERNMENT PLEADER SRI.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE ORDER OF THE DPI.**
EXT.P2	**TRUE COPY OF THE ORDER NO.B3/5000/02 DTD. 26-04-03 ISSUED BY R3.**
EXT.P3	**TRUE COPY OF THE ORDER DATED 28-08-03 ISSUED BY R4.**
EXT.P4	**TRUE COPY OF THE ORDER DATD 8-12-04 ISSUED BY R1.**
EXT.P5	**TRUE COPY OF THE G.O.(RT)NO.1691/06/G1.EDN. DTD. 25-4-06**
EXT.P6	**TRUE COPY OF THE APPOINTMENTORDER IN THE LEAVE VACANCY AS APPROVED BY THE D.E.O.**
EXT.P7	**TRUE COPY OF THE APPOINTMENT DATED 6-6-01 OF R2.**
EXT.P8	**TRUE COPY OF THE G.O.46/2006/G1.EDN. DTD. 1-2-06.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No. 18003 OF 2006

Dated this the 28th day of November,2006.

JUDGMENT

Case of the petitioners is as follows:

First petitioner is the manager. Second petitioner is a teacher appointed with effect from 01-11-2000 to 04-01-2001 as H.S.A. against a leave vacancy of Smt.Anitha (Natural Science). Initially the approval sought of her appointment was rejected by the D.E.O. as also by the Deputy Director on the ground tha,t the school is a newly upgraded one and the manager has to absorb the protected teachers. Thereafter, on the basis of Ext.P1 issued by the Director of Public Instruction, by Ext.P6 D.E.O granted approval to the said appointment against the leave vacancy. On 31-03-01, the Headmistress of the school retired from service. Against the said vacancy, one Smt. Radhamma (Natural Science) was promoted as Headmistress with effect from 01-06-2001. Against the consequential vacancy of H.S.A. (Natural Science) second petitioner came to be appointed as H.S.A. (Natural Science) vide Ext.P7 order. The District Educational Officer declined the approval on the ground that there is no protected

teacher. By Ext.P2 the Deputy Director allowed appeal. Manager resubmitted the proposal before the D.E.O. for approval. By Ext.P3, D.E.O. again rejected the approval on the ground that the subject ratio is not satisfied in the appointment of the second petitioner.

2. First petitioner preferred revision before the Government. That came to be rejected by Ext.P4. Against the same, first petitioner preferred a review petition. That came to be rejected by Ext.P5. Petitioners challenge Exts.P3 to P5 orders. It is to be noted that in Ext.P5 Government has in fact cancelled the approval granted to the appointment of the second petitioner against the leave vacancy vide Ext.P6.

3. In Ext.P4, two reasons are given. Firstly it is stated that during 2000-01 the sanctioned post of Physical Science in the school were 4 and only three teachers were appointed and for the natural science two posts were sanctioned against which three teachers were working. It is stated that second petitioner is a natural science hand while the dearth is in Physical Science. It is also stated that absorption of protected teacher was not done. Ext.P5 is an order passed on the purported review petition. It is difficult to understand how a review petition is maintainable against Ext.P4 under Rule 93 as only original orders can be reviewed. Therefore Ext.P5 order can be treated as an order

passed without jurisdiction. In Ext.P5 of course it is inter-alia stated that the position mentioned in Ext.P5 was not reported by the DPI at the time of consideration and the very appointment of the second petitioner in leave vacancy is irregular and it did not satisfy subject ratio.

4. Learned counsel for the petitioner would contend that as far as appointment of protected teacher is concerned, the appointment of the second petitioner against the leave vacancy cannot be questioned saying that protected teacher is not appointed, as it was only a leave vacancy and there is no question of appointing a protected teacher. it is further stated that the said appointment was already approved on the basis of the direction in Ext.P1 by Ext.P6 order. It is further stated that the school was started in the year 1982 and a protected teacher was in fact appointed. But she went back to her parent school in the year 1984 and in the said vacancy, another protected teacher was not appointed. But the appointment of the teacher other than protected teacher came to be approved, it is pointed out. It is further pointed out that the vacancy against which second petitioner was appointed vide Ext.P7 was not a vacancy created by vacating the office by the protected teacher. It is therefore pointed out that the order providing protection could not stand in the way of approval being granted to the second petitioner. As

far as subject ratio is concerned, relying on the staff fixation order in question it is submitted that there were only 74 periods for Physical Science and three teachers alone are necessary. It is submitted that second petitioner though a Natural Science candidate can be accommodated on the basis that minimum subject requirement as far as HSA (Physical Science) stand satisfied that there being three teachers to teach Physical Science.. Petitioners rely on the decision of this court reported in **Bhanumathy v. State of Kerala** 2000(2)KLT 470).

5. I heard learned Government Pleader also.

6. A perusal of Ext.P4 does not reflect these aspects being considered. In such circumstances, I feel that the matter should be re-considered by the Government. Accordingly, Exts. P4 and P5 are quashed and a decision in the matter will be taken by the first respondent in accordance with law after hearing the petitioners and any other affected parties within two months from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

K.M.JOSEPH.
JUDGE.

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